



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार, 17 जून, 2013 / 27 ज्येष्ठ, 1935

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

NOTIFICATION

Shimla the 11th June, 2013

No. HHC/GAZ/14-323/2011.—Hon'ble the Chief Justice has been pleased to grant 13 days' earned leave w.e.f. 17.06.2013 to 29.6.2013 with permission to prefix Sunday falling on 16.06.2013 and to suffix Sunday falling on 30.06.2013 in favour of Mrs. Upasna Sharma, Civil Judge (Junior Division)-cum-JMIC Court No. 3 Mandi, District Mandi, H.P.

Certified that Smt. Upasna Sharma is likely to join the same post and at the same station from where she proceeds on leave, after expiry of the above period of leave.

Also certified that Smt. Upasna Sharma would have continued to hold the same post of Civil Judge (Junior Division)-cum-JMIC, Court No. 3, Mandi, H.P., but for her proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, 13th June, 2013

No. HHC/GAZ/14-198/89-III.—Consequent upon the appointment of Shri J.K.Sharma, Director, H.P.Judicial Academy as President District Consumer Forum, Shimla, vide notification No. FDS-B(2)-9/2010, dated 13th June, 2013, issued by the Principal Secretary (F, CS & CA) to the Government of Himachal Pradesh, the Hon'ble High Court of H.P. has been pleased to order to relieve the above named officer from the present assignment, with immediate effect to enable him to join new assignment.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, the 13th June, 2013

No. HHC/GAZ/14-221/96.—Hon'ble the Chief Justice has been pleased to grant 18 days earned leave w.e.f. 29.5.2013 to 15.6.2013 with permission to suffix Sunday falling on 16.6.2013 in favour of Shri Padam Singh, Additional District and Sessions Judge(I), Mandi.

Certified that Shri Padam Singh is likely to join the same post and at the same station from where he proceeds on leave after expiry of the above period of leave.

Also certified that Shri Padam Singh would have continued to hold the post of Additional District and Sessions Judge(I), Mandi, but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla the 13th June, 2013

No. HHC/GAZ/14-324/2011.—Hon'ble the Chief Justice has been pleased to grant ex post facto sanction of 22 days' earned leave w.e.f. 13.4.2013 to 4.5.2013 with permission to suffix Sunday fell on 5.5.2013 in favour of Sh. Vishal Bhamnotra, Civil Judge (Junior Division)-cum-JMIC(III), Ghumarwin, H.P.

Certified that Sh. Vishal Bhamnotra had joined the same post and at the same station from where he had proceeded on leave, after expiry of the above period of leave.

Also certified that Sh. Vishal Bhamnotra would have continued to hold the post of Civil Judge (Junior Division)-cum-JMIC(III), Ghumarwin, H.P. but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

विधि विभाग

अधिसूचना

शिमला-2, 4 मई, 2013

संख्या एल0एल0आर0-ई(9)-6/2012-लेज.—क्योंकि श्री संजीव कुमार गुलेरिया, अधिवक्ता को इस विभाग की अधिसूचना संख्या0 एल0 एल0 आर0-ई(9)-4/2010-लेज तारीख 09-12-2011 द्वारा उप-मण्डल हमीरपुर, जिला हमीरपुर के लिए नोटरी पब्लिक के रूप में नियुक्त किया गया था और उनका नाम नोटरी के रजिस्टर में क्रम संख्या 374 पर प्रविष्ट किया गया था ;

और क्योंकि श्री संजीव कुमार गुलेरिया, नोटरी पब्लिक हमीरपुर ने पत्र दिनांक 20-04-2013 द्वारा सूचित किया है कि वह नोटरी पब्लिक के रूप में कार्य करने के इच्छुक नहीं है और इस संदर्भ में अपने प्रमाण पत्र को वापिस करने का अनुरोध किया है ।

अतः हिमाचल प्रदेश के राज्यपाल, नोटरी अधिनियम, 1952 की धारा 10(क) के साथ पठित नोटरी नियम, 1956 के नियम 13 (13) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री संजीव कुमार गुलेरिया, नोटरी पब्लिक, उप-मण्डल हमीरपुर, जिला हमीरपुर का नाम नोटरी के रजिस्टर से तुरन्त हटाए जाने का आदेश देते हैं ।

आदेश द्वारा,
(चिराग भानू सिंह),
सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)6/2012-Leg. Dated 04 -05-2013 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 4th May, 2013

No. LLR-E(9)- 6/2012-Leg.—WHEREAS Shri Sanjeev Kumar Guleria, Advocate was appointed as Public Notary vide Government Notification No.LLR-E(9)-4/2010-Leg. dated 09-12-2011 and authorised to practice as such within the territorial limits of Sub-Division

Hamirpur of District Hamirpur and his name was entered at serial No. 374 in the Register of Notaries ;

AND WHEREAS Shri Sanjeev Kumar Guleria, Advocate Hamirpur vide letter dated 20-04-2013 has intimated that he is not interested to continue to practice as Public Notary and has requested to withdraw his certificate of practice.

Now, therefore, the Governor, Himachal Pradesh in exercise of the powers conferred by section 10(a) of the Notaries Act, 1952 read with rule 13(13) of the Notaries Rules, 1956 is please to order the removal of the name of Shri Sanjeev Kumar Guleria, Notary Public of Sub-Division Hamirpur of District Hamirpur from the Register of Notaries with immediate effect.

By order,
(CHIRAG BHANU SINGH),
LR-cum- Secretary (Law).

I

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 24-01-2013

No. Sharm (A) 7-1/2005 (Award) -part-file In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Shimla of the following cases on the website of Labour & Employment Department:—

Sr. No.	Case No.	Title of the Case	Date of Award
1.	287/2002	Smt./Shri Dhain Singh V/s Vice President Jayko India Ltd, Solan.	6-12-2012
2.	285/2002	Sh. Rajesh Kumar V/S -do-	6-12-2012
3.	77/2009	Sh. Bidhi Chand V/s M/S Eicher Tractor Parwanoo.	15-12-2012
4.	51/2007	Sh. Nagin Chand V/s M/S Gujrat Ambuja cement, D/Ghat.	6-12-2012
5.	40/2010	Sh. Rajesh Kumar V/S M/S Isdoyed Engg technoliges Ltd.	5-12-2012
6.	60/2010	Sh. Raj Kumar V/S M/S Anand Aircon Parwanoo.	11-12-2012
7.	54/2011	Sh. Virender Thakur V/s M/S Padmawati Balaji Kasumpti.	20-12-2012
8.	59/2011	Sh. Mohan Singh V/s M/s Diamond Products Ltd. Sirmour.	18-12-2012
9.	33/2008	Sh. Brij Lal V/s M.D. Ambuja Cement Ltd.	6-12-2012
10.	33/2011	Sh. Summan Bala V/s M/s Shivalik Agro poly product & others.	3-12-2012
11.	45/2007	Sh. Virender Kumar Sharma V/s M/S Raja Forging & Gears Ltd. Sai Road, Baddi.	31-12-2012

BY order,
Sd/-
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref No. 77 of 2009.

Instituted on. 19.8.2009.

Decided on 15.12.2012.

Bidhi Chand S/o Shri Devi Singh R/o Village & P.O Badhar, Tehsil Bhoranj, District Hamirpur, H.P through Shri J.C Bhardwaj, President HP AITUC, H.Q. Saproon, Solan, H.P.

*..Petitioner.**Vs.*

The Managing Director, M/s Eicher Tractors, Transmission Division (A unit of Tafe Motors and Tractors Ltd.,) Plot No. 29-30, Sector-II Parwanoo, District Solan, H.P.

*..Respondent.**Reference under section 10 of the Industrial Disputes Act, 1947.***For petitioner :** Shri J.C Bhardwaj, AR.**For respondent :** Shri Hardeep Verma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the dismissal from services of Shri Bidhi Chand S/o late Shri Devi Singh, Machine Operator by the Vice President, Eicher Tractor Transmission Division (A unit of Tafe Motors and Tractors Ltd.) Parwanoo w.e.f. 28.6.2008 vide letter dated 28.6.2008 after serving chargesheet and after holding enquiry is legal and justified? If not to what back wages, seniority, service benefits and relief the concerned workman is entitled to?”

2. The petitioner has filed the claim petition stating that he was appointed as machine operator by the respondent in August, 1984. He remained in continuous service till 28.6.2008 when he was wrongly and illegally terminated by the respondent on the basis of some enquiry. The petitioner challenged the enquiry on the ground that enquiry officer did not serve any notice upon him and did not inform the date, place and time of enquiry. Earlier a preliminary enquiry was conducted and its report was also not supplied to the petitioner. The witnesses who were examined by the management, were biased against the petitioner. The witness Surinder Arora did not state anything regarding the charges against the petitioner but he stated about the previous allegations whereas other witness Ashok Sharma, the leave sanctioning authority, stated that petitioner remained absent from 19.5.2005 to 1.6.2005 but on the other hand he had sanctioned the leave of the petitioner. The petitioner further stated that the documents relating to the enquiry in question were not supplied to him with the chargesheet. Further during enquiry, no documents were supplied to him. Hence, the entire enquiry was illegal and against the principles of natural justice. As the result, petitioner prayed to set aside the enquiry report as well as his termination orders and further prayed to reinstate him with all consequential benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein it was admitted that the petitioner was appointed as a workman by the respondent since August, 1984. However, it was stated that the petitioner was habitual absentee as he used to remain absent un-

authorisedly and for the same earlier also warnings and punishment of stoppage of increments and suspension were imposed upon him. It was stated that chargesheets dated 8.6.2005 and 26.4.2006 were served upon the petitioner and he could not give any satisfactory reply, consequently, domestic enquiry was conducted wherein the charges levelled against petitioner were proved. The petitioner was informed and he was associated in the enquiry. The enquiry was conducted as per the principles of natural justice. Therefore, legal punishment was imposed upon the petitioner. Hence, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the allegations of respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the services of petitioner w.e.f. 28.6.2008 have been dismissed without holding proper and fair domestic enquiry as alleged? ..OPP.
2. If issue no.1 is proved to what relief of service benefits, the petitioner is entitled to? ..OPP.
3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 : Yes.

Issue No. 2 : Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief. : Reference answered in negative as the services of petitioner have been illegally terminated per operative part of award.

REASONS FOR FINDING

Issue No. 1.

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the petitioner was wrongly and illegally terminated by the respondent without holding proper and fair domestic enquiry. The enquiry in question conducted against the petitioner is against the principles of natural justice, hence, the same is not sustainable under law. Consequently, the termination orders of petitioner on the basis of said enquiry report is liable to set aside for the reasons recorded hereinafter.

10. The petitioner stepped into the witness box as PW-1 and deposed that he proceeded on leave on the first death anniversary of his father-in-law and initially his leave application was recommended and subsequently it was manipulated as not recommended by the Engineer. Thereafter, his wife fell ill, so, he sent Fax mark A for the extension of leave on 24.5.2005. He tendered in evidence the original Fax Ex. P-3 as well as medical certificate of his wife Ex. P-4. His testimony is further revealing that he was served a show cause notice Ex. P-1 and he filed reply Ex.

P-2. He has further deposed that during enquiry he submitted written arguments Ex. P-5 but the enquiry officer again re-opened the enquiry and recorded the statement of senior Engineer Ashok Sharma. Then he filed a protest letter dated 28.7.2006 Ex. P-6. The petitioner further deposed that the enquiry officer did not afford opportunity to him to rebut the statement of Ashok Sharma.

11. The respondent has examined Shri G.D Maheshwari, enquiry officer as RW-1. He has stated that he conducted two enquiries against the petitioner. He has stated that the petitioner was associated during enquiries and opportunities were given to him to cross-examine the management witnesses, thereafter, opportunity was given to the petitioner to lead evidence. In his cross-examination, he has admitted that after the closer of the evidence of the parties, one witness on behalf of management was called and examined. But there is nothing in his testimony that the petitioner was informed about the examination of management witness after the closer of evidence of both the parties and opportunity was given to the petitioner to cross-examine said witness.

12. The enquiry proceedings are Ex. PX. These proceedings are revealing that the statement of Shri Ashok Sharma witness was recorded in the end. His statement is revealing since the petitioner and his defence assistant/representative refused to participate in the enquiry, so there was no question of cross-examination. Consequently, the statement of witness was recorded. But proceeding dated 29.7.2006 are not revealing that that the petitioner was heard by the enquiry officer on the point to examine Shri Ashok Sharma as a witness, especially when the evidence of both the parties were over and enquiry was fixed for final arguments. The testimony of petitioner is revealing that Ashok Sharma was examined as management witness when he had already submitted his written arguments. The enquiry proceedings Ex. PX do not reveal the reasons why Shri Ashok Sharma was examined on behalf of management when the evidence of parties were over. The proceedings dated 29.7.2006 are revealing that the petitioner and his defence assistant/representative had refused to participate in the enquiry proceeding. To my mind, this conduct of petitioner is justified because there was apparent biasness on the part of enquiry officer against the petitioner as he did not hear the petitioner on the point of examination of Shri Ashok Sharma as management witness at the fag end of enquiry. Moreover, the proceedings dated 29.7.2006 are silent why the enquiry officer thought it necessary to examine Shri Ashok Sharma at the fag end of enquiry. Therefore, I am satisfied with the arguments advanced on behalf of petitioner that the enquiry officer was biased against the petitioner. On this ground, the enquiry proceedings are not sustainable under law.

13. Further the petitioner has alleged that he was not supplied with the documents along-with chargesheet. Again the testimony of enquiry officer (RW-1) is relevant. In his cross-examination, he has admitted that no document was tagged with the chargesheet. The enquiry proceedings Ex. PX are revealing that on 20.9.2005 on behalf of management documents Ex. M-1 to Ex. M-22 were tendered in evidence. However, on the same day, copies of those documents were supplied to the petitioner. But to my mind, those documents could have been supplied to the petitioner along-with chargesheet and before the commencement of enquiry. As discussed hereinabove, one management witness Shri Ashok Sharma was examined at the fag end of enquiry when the enquiry was fixed for final arguments and this witness also tendered in evidence documents Ex. MW-2/1 to Ex. MW-2/2, copies of these documents were also not supplied to the petitioner.

14. Hence, it stands established on record that on behalf of management no steps were taken for the supply of material/documents to the petitioner in advance before the commencement of enquiry which were relied upon during the enquiry proceeding. I am of the considered opinion that failure to supply the same to the petitioner before the commencement of enquiry would render the entire enquiry proceedings unsustainable under law and the dismissal of the petitioner is also not sustainable as reasonable opportunity to defend was denied to the petitioner. Here, I am

supported by the law laid down by Hon'ble Supreme Court of India in the matters of 2011-II-LLJ-627 (SC) and 2002-I-LLJ-544 (SC).

15. Consequently, for the aforesaid reasons, the dismissal from service of petitioner w.e.f. 28.6.2008 is illegal and unjustified in the absence of proper and fair domestic enquiry. Hence, this issue is answered in favour of petitioner.

Issue No. 2.

16. For the reason to be recorded hereinabove while deciding issue no.1, the dismissal from services of petitioner w.e.f. 28.6.2008 by the respondent is hereby set aside and the petitioner is entitled to reinstatement in service with immediate effect with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is answered in favour of petitioner.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the dismissal from services of petitioner w.e.f. 28.6.2008 by the respondent is set aside and the petitioner is ordered to be reinstatement in service with immediate effect with seniority and continuity but without back wages and the reference is decided in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 15th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref . No. 287 of 2002
Instituted on. 16.9.2002.
Decided on 06.12.2012.

Dhian Singh S/o Shri Darshan Singh, though J.C Bhardwaj, President HP AITUC H.Q
Saproon Solan, H.P.

..Petitioner.

Vs.

The Vice President, Joyco India Ltd., Village Katha, P.O Baddi, District Solan 173205.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Rajeev Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the domestic enquiry conducted by M/s Joyco India Ltd., Baddi District Solan, H.P against Shri Dhian Singh S/o Shri Darshan Singh workman and termination of his services w.e.f. 13.5.2000 on the basis of enquiry report is fair and justified? If not what relief of service benefits including seniority and back wages the above workman is entitled to? ”

2. The petitioner has filed the claim petition on the ground that he was serving in the respondent establishment since 11.11.1995. The workmen had filed a demand notice dated 6.10.1999 which was pending for adjudication. Despite the pendency of demand notice, the respondent illegally terminated the services of petitioner w.e.f. 13.5.2000 on the basis of one-sided illegal enquiry. In fact, the respondent did not inform the petitioner about the initiation of enquiry as well as appointment of enquiry officer. During the pendency of enquiry, no suspension allowance was paid to the petitioner. The chargesheet was not served upon the petitioner and before terminating his services proper service of show cause notice was not effected upon him. Before the initiation of enquiry, the petitioner was not supplied with the copy of documents relied upon by the enquiry officer, hence, the enquiry was conducted against the principles of natural justice. The petitioner also challenged his termination on the ground that it was in violation of section 33(2)-b of the Industrial Disputes Act, 1947 in view of pendency of demand notice dated 6.10.1999. Hence, petitioner prayed to set aside his termination orders and to reinstate him with all consequential benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein preliminary objections as to maintainability of the petition and suppression of material facts by the petitioner were raised. On merits, the respondent admitted that the petitioner was employee of the respondent. However, it was further stated that the petitioner indulged in grave misconduct during the course of his employment. In fact, petitioner remained absent from duty without any sanctioned leave w.e.f. 1.11.1999. On 11.11.1999, the respondent management had issued notice to the petitioner asking him to attend the duties, but in vain. The respondent management again issued a show cause notice dated 24.11.1999 to the petitioner asking him to resume his duties. When petitioner did not join his duties, then chargesheet dated 1.12.1999 was issued to him and he was asked to file the reply within stipulated time, but petitioner did not file any reply. Consequently, Shri R.K. Soni was appointed as an enquiry officer and he conducted the enquiry as per the principles of natural justice. The petitioner attended one hearing of enquiry and thereafter chose to remain absent, so ex parte proceedings in enquiry were conducted and charges against the petitioner were proved. Consequently, show cause notice was issued to the petitioner informing him that the respondent intended to impose penalty of dismissal. The petitioner was asked to file the reply but again petitioner did not file any reply. The enquiry report was also sent to the petitioner, hence, petitioner was legally terminated from service in the light of legal and valid enquiry report. The respondent also stated that the petitioner was gainfully employed, hence, he was not entitled to be reinstated with consequential service benefits. Hence, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the petitioner has been illegally terminated from service w.e.f. 13.5.2000 on the basis of enquiry report? If so, its effect? ..OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? ..OPP.
3. Whether the petition in the present form is not maintainable? ..OPR.
4. Whether the petitioner is gainfully employed? If so, its effect? ..OPR.
5. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 : Yes.

Issue No. 2 : Entitled to reinstatement in service with continuity on the same terms and conditions but without back wages.

Issue No. 3 : No.

Issue No. 4 : Yes.

Relief. : Reference answered in negative as the services of petitioner have been illegally terminated per operative part of award.

REASONS FOR FINDING

Issue No. 1.

9. In the light of arguments of both the parties and material on record, I am of the considered opinion that the enquiry conducted against the petitioner is not sustainable under law as to my mind principles of natural justice have been violated. As the result, the termination of petitioner from service w.e.f. 13.5.2000 is not sustainable under law.

10. Both the parties have led evidence in support of their respective contentions. Petitioner examined himself in evidence whereas on behalf of respondent four witnesses were examined including the enquiry officer.

11. It is un-disputed fact that the petitioner was employee of the respondent company and he was absent from his duties since 1.11.1999. The petitioner in his cross-examination has admitted this fact that he was absent from duties since 1.11.1999. However, the petitioner has stated that he was not allowed to enter the gate of the premises by the security. It is also un-disputed fact that for the aforesaid absence, the petitioner was chargesheeted and was held guilty and consequently he was terminated from service by the respondent.

12. It is the case of the respondent that a letter dated 11.11.1999 was issued to the petitioner asking him to attend the duties but this fact could not be proved with the help of evidence

on record. Although, RW-3 Hardeep Rana, the Plant Manager of respondent has deposed this fact but he could not produce the copy of letter dated 11.11.1999 and further it could not be proved by the respondent that copy of said letter was supplied to the petitioner. This witness has further stated that on 24.11.1999 respondent company issued show cause notice Ex. PW-3/A to the petitioner vide postal receipt Ex. RW-3/A-1 and registered AD Ex. RW-3/B and Ex. RW-3/C. But the registered AD does not reveal that the said notice was received by the petitioner. RW-3 has further stated that on 22.12.1999, the respondent decided to initiate enquiry against the petitioner vide letter Ex. RW-3/D and R.K Soni was appointed as an enquiry officer. But again service of this letter upon the petitioner is not proved. So, it is not proved that petitioner was informed about the appointment of enquiry officer.

13. Ex. RP-1 is the chargesheet dated 1.12.1999 which bears the signature of Manager P&A of respondent company. It is not proved on record that copy of said chargesheet was supplied to the petitioner. The statement of petitioner is revealing that no chargesheet was served upon him. However, he has further stated that the chargesheet was shown to him on the gate of factory and he had filed the reply of the same but as per respondent witness, the petitioner did not file any reply to the chargesheet. First of all, burden was upon the respondent to show that the chargesheet was served upon the petitioner and copy of same was supplied to him but his burden could not be discharged by the respondent as there is no documentary evidence on record to show that copy of chargesheet Ex. RP-1 was supplied to the petitioner.

14. The testimony of petitioner is revealing that he was informed about the enquiry on the factory gate but no written letter was received by him. The respondent has examined RW-4 Rajesh Kumar, the enquiry officer who has stated that when he was appointed as enquiry officer, he had issued notice to the petitioner to appear before him but the petitioner did not appear. I do not find any force in this testimony of enquiry officer. The enquiry officer has placed on record the copies of proceedings of enquiry Ex. RW-4/B, Ex. RW-4/C and Ex. RW-4/D. These documents are revealing that the enquiry started on 4.1.2000 and on that day the worker/petitioner was not present. As discussed hereinabove, there is no notice to the petitioner to appear before enquiry officer on 4.1.2000. These proceedings are revealing that the notice along-with chargesheet was served through registered post to the petitioner but it was received back unclaimed. This evidence is sufficient to suggest that the chargesheet and notice was not received by the petitioner. Ex. RW-4/A is revealing that the enquiry officer had held that he would inform worker/petitioner through registered post about the next date of enquiry which was 18.1.2000. Ex. RW-4/C is the copy of proceedings dated 18.1.2000. It is revealing that on said date petitioner appeared before the enquiry officer. The petitioner has stated in his testimony that on 4.1.2000 he had gone to the place of enquiry but the enquiry officer did not turn up, so he wrote letters Ex. P/7 and Ex. P/8 to the Vice President of the respondent company. However, he has admitted that he appeared before the enquiry officer on 18.1.2000 when he made a written request vide Ex. RP-3 to conduct the enquiry in Hindi. This fact has been mentioned by the enquiry officer in proceedings dated 18.1.2000, copy of which is Ex. RW-4/B. These proceedings are revealing that next date of enquiry for evidence was fixed for 3.2.2000. But these proceedings are not revealing that the enquiry officer had supplied the documents to the petitioner as well as list of witnesses. In the absence of such compliance, the principles of natural justice have been violated as the petitioner was unable to defend himself effectively. The copy of proceedings of enquiry Ex. RW-4/D is revealing that on 3.2.2000 two witnesses were examined who tendered in evidence documents M-I to M-VI but these documents were not earlier supplied to the petitioner when he appeared before enquiry officer on 18.1.2000.

15. On 18.1.2000, the enquiry officer did not make any efforts to ask the worker/petitioner whether he intended to appoint any defence assistant. There is nothing on record to show that

opportunity was afforded to the petitioner to appoint defence assistant. The denial of any such opportunity is also violation of principle of natural justice.

16. On behalf of respondent it was argued that after the conclusion of enquiry, show cause notice was served upon the petitioner along-with copy of enquiry report informing him about the out-come of enquiry and further petitioner was informed that respondent had decided to dismiss him. But there is no specific documentary evidence on record to show that in fact the copy of enquiry report was received by the petitioner and he also received show cause notice. Therefore, there is no occasion for the petitioner to file reply to enquiry report.

17. The respondent has examined RW-1 Shri K.R Chauhan and RW-2 Shri Ramesh Gupta to prove the extract of attendance register Ex. RA to Ex. RA-6 and letters Ex. RA-7 and Ex. RP-6. But these documents would not make the enquiry report a legal and valid evidence.

18. In the light of my aforesaid discussion, it stands established that prior to the initiation of enquiry against the petitioner for his absence w.e.f. 1.11.1999, no show cause notice was served upon him. Further it is also proved that the chargesheet was not supplied to the petitioner. At the same time, the documents relied upon by the enquiry officer during enquiry were not supplied to the petitioner. The petitioner was not supplied with the list of witnesses by the enquiry officer. Here the law laid down by the Hon'ble Supreme Court in 2011-II-LLJ-627 (SC) is relevant wherein it has been held that:

“It was a settled principle of natural justice that if any material was to be relied in departmental proceedings, a copy of the same must be supplied to the charge sheeted employee so that he might have a chance to rebut the same.”

19. Further, it also stands established that no opportunity was given to the petitioner to appoint defence assistant. All these established facts are sufficient to hold that the enquiry was not conducted in fair and proper manner as the opportunity of being heard was denied to the petitioner. This resulted into violation of principles of natural justice. As the result, the enquiry report Ex. RW-3/E is not sustainable under law and liable to set aside. Consequently, the termination of services of petitioner w.e.f. 13.5.2000 on the basis of aforesaid enquiry report is also not sustainable and is hereby set aside and quashed.

20. On behalf of petitioner, it was argued that no suspension allowance was paid to him during enquiry. But in the light of facts of the case, the petitioner was not entitled to any suspension allowance as he was not suspended and there is no evidence on record to show that after 1.11.1999, he had attended his duties. As per record, the petitioner remained absent w.e.f. 1.11.1999 till he was terminated on 13.5.2000. So, for the aforesaid reason in the absence of any suspension order, the petitioner is not entitled to the suspension allowance.

21. The petitioner also argued that his termination was in violation of section 33(2)-b of Industrial Disputes Act, 1947 as at that time his demand notice dated 6.10.1999 was pending. The copy of demand notice Ex. P/2 is produced on record which is revealing that it was submitted from President and General Secretary of the workers union regarding the working conditions of workmen. There is nothing in it to show that specific demand pertaining to the petitioner was also mentioned. On the top of it, there is nothing on record to show that said demand notice was pending before Conciliation Officer when the termination orders of petitioner were issued. The petitioner did not produce the relevant record from the Labour-cum-Conciliation Officer to prove said allegation. Hence, in the absence of any evidence in this regard, the violation of section 33 (2)-b of Industrial Disputes Act, 1947 is not proved.

22. However, for the reasons discussed hereinabove, the termination of services of petitioner w.e.f. 13.5.2000 is not sustainable under law being against the principles of natural justice. Accordingly, this issue is decided in favour of petitioner.

Issue No. 2 & 4.

23. Both these issues are interlinked and can be disposed of by a single finding.

24. For the reason to be recorded hereinabove while discussing issue no.1, the termination of services of petitioner w.e.f. 13.5.2000 by the respondent is hereby set aside and the petitioner is held entitled to be reinstated in service with continuity on the same terms and conditions. The petitioner is not entitled to the back wages as I find sufficient material on record to suggest that petitioner is gainfully employed.

25. Although, the respondent has not produced the specific evidence to establish that at the relevant time the petitioner was gainfully employed but here the cross-examination of petitioner is relevant wherein he has admitted that he was having kids who are studying in School. At the same time he has also admitted that he has got landed property. These facts are sufficient to suggest that the petitioner was having sufficient income. So, it can be safely concluded that after his termination, the petitioner was gainfully employed. Accordingly, in the light of my aforesaid discussion, issue No.1 is answered in favour of petitioner whereas issue no.4 is answered in favour of respondent.

Issue No. 3

25. From the careful perusal of the record, there is nothing to suggest that the petition in the present form is not maintainable. Hence, this issue is decided against the respondent.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner w.e.f. 13.5.2000 by the respondent is set aside and the petitioner is ordered to be reinstated in service with continuity on the same terms and conditions. The petitioner is not entitled to the back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. No. 285 of 2002
Instituted on. 16.9.2002.
Decided on 06.12.2012.

Rajesh Sharma S/o Shri Braham Dutt, through J.C Bhardwaj, President HP AITUC H.Q
Sapruon Solan, H.P.

..Petitioner.

Vs.

The Vice President, Joyco India Ltd., Village Katha, P.O Baddi, District Solan 173205.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Shri Rajeev Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the domestic enquiry conducted by M/s Joyco India Ltd., Baddi District Solan, H.P against Shri Rajesh Sharma S/o Shri Brahm Dutt workman and termination of his services w.e.f. 13.5.2000 on the basis of enquiry report is fair and justified? If not what relief of service benefits including seniority and back wages the above workman is entitled to?”

2. The petitioner has filed the claim petition on the ground that he was serving in the respondent establishment since 22.3.1996. The workmen had filed a demand notice dated 6.10.1999 which was pending for adjudication. Despite the pendency of demand notice, the respondent illegally terminated the services of petitioner w.e.f. 13.5.2000 on the basis of one-sided illegal enquiry. In fact, the respondent did not inform the petitioner about the initiation of enquiry as well as appointment of enquiry officer. During the pendency of enquiry, no suspension allowance was paid to the petitioner. The chargesheet was not served upon the petitioner and before terminating his services proper service of show cause notice was not effected upon him. Before the initiation of enquiry, the petitioner was not supplied with the copy of documents relied upon by the enquiry officer, hence, the enquiry was conducted against the principles of natural justice. The petitioner also challenged his termination on the ground that it was in violation of section 33(2)-b of the Industrial Disputes Act, 1947 in view of pendency of demand notice dated 6.10.1999. Hence, petitioner prayed to set aside his termination orders and to reinstate him with all consequential benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein preliminary objections as to maintainability of the petition and suppression of material facts by the petitioner were raised. On merits, the respondent admitted that the petitioner was employee of the respondent. However, it was further stated that the petitioner indulged in grave misconduct during the course of his employment. In fact, petitioner remained absent from duty without any sanctioned leave w.e.f. 1.11.1999. On 11.11.1999, the respondent management had issued notice to the petitioner asking him to attend the duties, but in vain. The respondent management again issued a show cause notice dated 24.11.1999 to the petitioner asking him to resume his duties. When petitioner did not join his duties, then chargesheet dated 1.12.1999 was issued to him and he was asked to file the reply within stipulated time, but petitioner did not file any reply. Consequently, Shri R.K Soni was appointed as an enquiry officer and he conducted the enquiry as per the principles of natural justice. The petitioner attended one hearing of enquiry and thereafter chose to remain absent, so ex parte proceedings in enquiry were conducted and charges against the petitioner were proved. Consequently, show cause notice was issued to the petitioner informing him that the respondent intended to impose penalty of dismissal. The petitioner was asked to file the reply but again petitioner did not file any reply. The enquiry report was also sent to the petitioner, hence, petitioner was legally terminated from service in the light of legal and valid enquiry report. The respondent also stated that the petitioner was gainfully employed, hence, he was not entitled to be reinstated with consequential service benefits. Hence, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the petitioner has been illegally terminated from service w.e.f. 13.5.2000 on the basis of enquiry report? If so, its effect? ..OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? ..OPP.
3. Whether the petition in the present form is not maintainable? ..OPR.
4. Whether the petitioner is gainfully employed? If so, its effect? ..OPR.
5. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 : Yes.

Issue No. 2 : Entitled to reinstatement in service with continuity on the same terms and conditions but without back wages.

Issue No.3 : No.

Issue No. 4 : Yes.

Relief. : Reference answered in negative as the services of petitioner have been illegally terminated per operative part of award.

REASONS FOR FINDING

Issue No. 1.

9. In the light of arguments of both the parties and material on record, I am of the considered opinion that the enquiry conducted against the petitioner is not sustainable under law as to my mind principles of natural justice have been violated. As the result, the termination of petitioner from service w.e.f. 13.5.2000 is not sustainable under law.

10. Both the parties have led evidence in support of their respective contentions. Petitioner examined himself in evidence whereas on behalf of respondent four witnesses were examined including the enquiry officer.

11. It is un-disputed fact that the petitioner was employee of the respondent company and he was absent from his duties since 1.11.1999. The petitioner in his cross-examination has admitted this fact that he was absent from duties since 1.11.1999. However, the petitioner has stated that he was not allowed to enter the gate of the premises by the security. It is also un-disputed fact that for the aforesaid absence, the petitioner was chargesheeted and was held guilty and consequently he was terminated from service by the respondent.

12. It is the case of the respondent that a letter dated 11.11.1999 was issued to the petitioner asking him to attend the duties but this fact could not be proved with the help of evidence

on record. Although, RW-3 Hardeep Rana, the Plant Manager of respondent has deposed this fact but he could not produce the copy of letter dated 11.11.1999 and further it could not be proved by the respondent that copy of said letter was supplied to the petitioner. This witness has further stated that on 24.11.1999 respondent company issued show cause notice Ex. PW-3/A to the petitioner vide postal receipt Ex. RW-3/B. But the service of this show cause notice upon the petitioner is not duly proved. RW-3 has further stated that on 22.12.1999, the respondent decided to initiate enquiry against the petitioner vide letter Ex. RW-3/D and R.K Soni was appointed as an enquiry officer. But again service of this letter upon the petitioner is not proved. So, it is not proved that petitioner was informed about the appointment of enquiry officer.

13. Ex. RP-1 is the chargesheet dated 1.12.1999 which bears the signature of Manager P&A of respondent company. It is not proved on record that copy of said chargesheet was supplied to the petitioner. The statement of petitioner is revealing that no chargesheet was served upon him. However, he has further stated that the chargesheet was shown to him on the gate of factory and he had filed the reply of the same but as per respondent witness, the petitioner did not file any reply to the chargesheet. First of all, burden was upon the respondent to show that the chargesheet was served upon the petitioner and copy of same was supplied to him but his burden could not be discharged by the respondent as there is no documentary evidence on record to show that copy of chargesheet Ex. RP-1 was supplied to the petitioner.

14. The testimony of petitioner is revealing that he was informed about the enquiry on the factory gate but no written letter was received by him. The respondent has examined RW-4 Rajesh Kumar, the enquiry officer who has stated that when he was appointed as enquiry officer, he had issued notice to the petitioner to appear before him but the petitioner did not appear. I do not find any force in this testimony of enquiry officer. The enquiry officer has placed on record the copies of proceedings of enquiry Ex. RW-4/A, Ex. RW-4/B and Ex. RW-4/C. These documents are revealing that the enquiry started on 4.1.2000 and on that day the worker/petitioner was not present. As discussed hereinabove, there is no notice to the petitioner to appear before enquiry officer on 4.1.2000. These proceedings are revealing that the notice along-with chargesheet was served through registered post to the petitioner but it was received back unclaimed. This evidence is sufficient to suggest that the chargesheet and notice was not received by the petitioner. Ex. RW-4/A is revealing that the enquiry officer had held that he would inform worker/petitioner through registered post about the next date of enquiry which was 18.1.2000. Ex. RW-4/B is the copy of proceedings dated 18.1.2000. It is revealing that on said date petitioner appeared before the enquiry officer. The petitioner has stated in his testimony that on 4.1.2000 he had gone to the place of enquiry but the enquiry officer did not turn up, so he wrote letters Ex. P/7 and Ex. P/8 to the Vice President of the respondent company. However, he has admitted that he appeared before the enquiry officer on 18.1.2000 when he made a written request vide Ex. RP-3 to conduct the enquiry in Hindi. This fact has been mentioned by the enquiry officer in proceedings dated 18.1.2000, copy of which is Ex. RW-4/B. These proceedings are revealing that next date of enquiry for evidence was fixed for 3.2.2000. But these proceedings are not revealing that the enquiry officer had supplied the documents to the petitioner as well as list of witnesses. In the absence of such compliance, the principles of natural justice have been violated as the petitioner was unable to defend himself effectively. The copy of proceedings of enquiry Ex. RW-4/C is revealing that on 3.2.2000 two witnesses were examined who tendered in evidence documents M-I to M-VI but these documents were not earlier supplied to the petitioner when he appeared before enquiry officer on 18.1.2000.

15. On 18.1.2000, the enquiry officer did not make any efforts to ask the worker/petitioner whether he intended to appoint any defence assistant. There is nothing on record to show that opportunity was afforded to the petitioner to appoint defence assistant. The denial of any such opportunity is also violation of principle of natural justice.

16. On behalf of respondent it was argued that after the conclusion of enquiry, show cause notice was served upon the petitioner along-with copy of enquiry report informing him about the out-come of enquiry and further petitioner was informed that respondent had decided to dismiss him. But there is no specific documentary evidence on record to show that in fact the copy of enquiry report was received by the petitioner and he also received show cause notice. Therefore, there is no occasion for the petitioner to file reply to enquiry report.

17. The respondent has examined two other witnesses. RW-1 Shri K.R Chauhan and RW-2 Shri Ramesh Gupta to prove the extract of attendance register Ex. RA to Ex. RA-6 and letters Ex. RA-7 and Ex. RP-6. But these documents would not make the enquiry report a legal and valid evidence.

18. In the light of my aforesaid discussion, it stands established that prior to the initiation of enquiry against the petitioner for his absence w.e.f. 1.11.1999, no show cause notice was served upon him. Further it is also proved that the chargesheet was not supplied to the petitioner. At the same time, the documents relied upon by the enquiry officer during enquiry were not supplied to the petitioner. The petitioner was not supplied with the list of witnesses by the enquiry officer. Here the law laid down by the Hon'ble Supreme Court in 2011-II-LLJ-627 (SC) is relevant wherein it has been held that:

“It was a settled principle of natural justice that if any material was to be relied in departmental proceedings, a copy of the same must be supplied to the charge sheeted employee so that he might have a chance to rebut the same.”

19. Further, it also stands established that no opportunity was given to the petitioner to appoint defence assistant. All these established facts are sufficient to hold that the enquiry was not conducted in fair and proper manner as the opportunity of being heard was denied to the petitioner. This resulted into violation of principles of natural justice. As the result, the enquiry report Ex. RW-3/E is not sustainable under law and liable to set aside. Consequently, the termination of services of petitioner w.e.f. 13.5.2000 on the basis of aforesaid enquiry report is also not sustainable and is hereby set aside and quashed.

20. On behalf of petitioner, it was argued that no suspension allowance was paid to him during enquiry. But in the light of facts of the case, the petitioner was not entitled to any suspension allowance as he was not suspended and there is no evidence on record to show that after 1.11.1999, he had attended his duties. As per record, the petitioner remained absent w.e.f. 1.11.1999 till he was terminated on 13.5.2000. So, for the aforesaid reason in the absence of any suspension order, the petitioner is not entitled to the suspension allowance.

21. The petitioner also argued that his termination was in violation of section 33(2)-b of Industrial Disputes Act, 1947 as at that time his demand notice dated 6.10.1999 was pending. The copy of demand notice Ex. P/2 is produced on record which is revealing that it was submitted from President and General Secretary of the workers union regarding the working conditions of workmen. There is nothing in it to show that specific demand pertaining to the petitioner was also mentioned. On the top of it, there is nothing on record to show that said demand notice was pending before Conciliation Officer when the termination orders of petitioner were issued. The petitioner did not produce the relevant record from the Labour-cum-Conciliation Officer to prove said allegation. Hence, in the absence of any evidence in this regard, the violation of section 33 (2)-b of Industrial Disputes Act, 1947 is not proved.

22. However, for the reasons discussed hereinabove, the termination of services of petitioner w.e.f. 13.5.2000 is not sustainable under law being against the principles of natural justice. Accordingly, this issue is decided in favour of petitioner.

Issue No. 2 & 4.

23. Both these issues are interlinked and can be disposed of by a single finding. 24. For the reason to be recorded hereinabove while discussing issue no.1, the termination of services of petitioner w.e.f. 13.5.2000 by the respondent is hereby set aside and the petitioner is held entitled to be reinstated in service with continuity on the same terms and conditions. The petitioner is not entitled to the back wages as I find sufficient material on record to suggest that petitioner is gainfully employed.

25. Although, the respondent has not produced the specific evidence to establish that at the relevant time the petitioner was gainfully employed but here the cross-examination of petitioner is relevant wherein he has admitted that he got married in 2001 and his Children are studying in Private School. He has further stated that he has got landed property also. This is sufficient to suggest that after his termination w.e.f. 13.5.2000, the petitioner was gainfully employed that is why he got married and provided education to his children's in a Private School. Accordingly, in the light of my aforesaid discussion, issue no.1 is answered in favour of petitioner whereas issue No. 4 is answered in favour of respondent.

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Issue No. 3

25. From the careful perusal of the record, there is nothing to suggest that the petition in the present form is not maintainable. Hence, this issue is decided against the respondent.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner w.e.f. 13.5.2000 by the respondent is set aside and the petitioner is ordered to be reinstated in service with continuity on the same terms and conditions. The petitioner is not entitled to the back wages. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. No. 51 of 2007
Instituted on. 25.6.2007.
Decided on 06.12.2012.

Nagin Chand S/o Shri Gulaba Ram R/o Village Gyana, P.O Mangoo, Tehsil Arki, District Solan, H.P.

..Petitioner.

Vs.

1. Senior Joint Deputy Chairman, M/s Gujrat Ambuja Cement (Unit Himachal) P.O Darlaghat, Tehsil Arki, District Solan, H.P.
2. Krishan Kumar Rajgaria (Contractor) C/o M/s Gujrat Ambuja Cement (Unit Himachal) P.O Darlaghat, Tehsil Arki, District Solan, H.P.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Virender Singh, Advocate

For respondent No.1 : Shri Peeyush Verma, Advocate.

For respondent No.2 : None.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Nagin Chand S/o Shri Gulaba Ram ex- driver by the management of M/s Gujrat Ambuja Cement (Unit Himachal) P.O Darlaghat, Tehsil Arki, District Solan, H.P. (2) Shri Krishan Kumar Rajgaria (Contractor) C/o M/s Gujrat Ambuja Cement (Unit Himachal) P.O Darlaghat, Tehsil Arki, District Solan, H.P. w.e.f. 3.4.2004 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not what relief of service benefits and amount of compensation the above aggrieved workman is entitled to? ”

2. The petitioner has filed the claim stating that he was engaged as driver by the respondents on 18.1.1999 and he did his duties continuously till 3.4.2004 when his services were wrongly terminated without any notice. Petitioner stated that he completed 240 days in the preceding twelve months. Therefore, he challenged his termination on the ground that it was against the provisions of Industrial Disputes Act, 1947. As the result, petitioner prayed to set aside his termination and he be reinstated in service with all consequential benefits.

3. Respondent no.1 filed reply wherein preliminary objections as to locus standi, cause of action, supersession of material facts, estoppel and no relationship of employer and employee between the parties were taken. On merits, respondent no.1 denied that the petitioner was engaged as driver on 18.1.1999 and he worked under the replying respondent till 3.4.2004. It was also denied that the petitioner had completed 240 days in the preceding calendar year under the replying respondent. It was stated that some time the contractor used to employ the workmen but replying respondent was having no concern with those workmen employed by the contractor. Hence, respondent no.1 prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of petitioner by the management of Gujrat Ambuja Cement, Darlaghat and Shri Krishan Kumar Rajgaria contractor w.e.f. 3.4.2004 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? ..OPP.

2. If issue no.1 is proved to what relief of service benefits the petitioner is entitled to? ..OPP.
3. Whether the petitioner has no locus standi to file and maintain his case? ..OPR.
4. Whether the petitioner is estopped to file the present petition by his own act, conduct and deeds? ..OPR.
5. Whether there is no employee-employer relationship between the petitioner and replying respondent? ..OPR.
6. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 : Partly yes.
 Issue No.2 : Entitled to reinstatement in service by respondent No. 2 with seniority and continuity but without back wages.
 Issue No. 3 : Partly no.
 Issue No. 4 : No.
 Issue No. 5 : Partly yes.
 Relief. : Reference answered in negative as the services of petitioner have been illegally terminated by respondent no.2 per operative part of award.

REASONS FOR FINDING

Issue No. 1 & 5.

9. Both these issues are interlinked and can be disposed of by a single finding.

10. After hearing both the parties and going through the record carefully, I find sufficient evidence on record to establish that the petitioner was engaged as driver by respondent no.2. There is no evidence to establish that petitioner was directly engaged by respondent no.1. Therefore, there is no relationship of employer and employee between the petitioner and respondent No.1.

11. The petitioner has stepped into the witness box as PW-1. He has stated that he used to ply vehicle of respondent no.1 bearing no. HP 51- 1239. He also produced the log book of the vehicle Ex. PA. He also stated that he was removed from service by respondent no.1 without any notice and payment of compensation. In his cross-examination, he has stated that no appointment letter was issued to him by respondent no.1. He has also stated that his wages were being paid by the respondent No. 2. His testimony is also revealing that his driving test was conducted by one Kamal Kumar through respondent No. 2.

12. The petitioner did not produce his appointment letter issued by respondent no.1. The log-book of vehicle no. HP 51- 1239 Ex. PA would not make petitioner employee of respondent

no.1. In the light of aforesaid testimony of petitioner, I have no hesitation to hold that he was appointed by respondent No. 2 and it was respondent no.2 who used to pay wages to the petitioner. Therefore, petitioner was employee of respondent no.2 and he was never engaged by respondent No.1. As the result, I find substance in the objection taken by respondent No.1 that there was no relationship of employer and employee between petitioner and respondent No.1.

13. On behalf of petitioner strong reliance was made on the testimony of PW-2 Gian Chand Verma, the Assistant from the office of P.F Commissioner who proved the EPF slips Ex. PW-2/A and Ex. PW-2/B of the petitioner. These EPF slips are revealing the name of employer to be Gujrat Ambuja Cement Ltd. But to my mind, this fact alone would not make the petitioner employee of respondent no.1 i.e Gujrat Cement Ltd. Here the cross-examination of PW-2 is relevant. He has stated in his cross-examination that EPF slips Ex. PW-2/A and Ex. PW-2/B fall under the sub code head. He has also admitted that the subscription of employee of Gujrat Ambuja Cement is deducted under the PF head whereas the subscription of employee of contractor used to be deducted under the PF sub head code. He has further clarified that initially there was no separate code for the contractors. It was only for the last 5/6 years, the separate code was given to contractors. Therefore, the testimony of this witness is specific evidence to show that in fact the EPF subscription of petitioner was deducted under sub code which was issued in favour of contractor of respondent No.1.

14. Therefore, in the light aforesaid evidence, it is hereby held that the petitioner was employee of respondent No.2 who was the contractor. In the regard, I am in agreement with the testimony of RW-1 Sunil Kumar, Assistant Manager of respondent No.1. He has categorically stated that the petitioner was employed by the contractor to whom the sub code was allotted by the Provident Fund Commissioner.

15. The respondent No. 2 has not contested the claim of the petitioner and there is no evidence on behalf of respondent No.2. The evidence on record go unrebutted against respondent No. 2. For the aforesaid reasons, it stands established that the petitioner was engaged by respondent No.2. The petitioner has categorically deposed that he worked on daily wages from 19.1.1999 till 3.4.2004 when his services were wrongly terminated. That means during the preceding year from 3.4.2004, the petitioner worked for 240 days, hence, before terminating his services, the respondent No. 2 was legally required to serve a notice upon the petitioner or to pay one month's wages and compensation to the petitioner in lieu of such notice as envisaged under section 25-F of Industrial Disputes Act, 1947. No such steps were taken by the respondent before terminating the services of petitioner. Hence, the termination of petitioner is against the provisions of Industrial Disputes Act, 1947 and liable to set aside.

16. Accordingly, for the aforesaid reasons issue no.1 is partly answered in favour of petitioner whereas issue No. 5 is also partly answered in favour of respondents.

Issue No. 2.

17. For the reason to be recorded hereinabove while deciding issue no.1 and 5, the services of petitioner have been wrongly and illegally terminated by respondent No. 2, so, he is entitled to be reinstated in service with seniority and continuity. Keeping in view facts and circumstances of the case, the petitioner is not entitled to back wages. Hence, this issue is answered in favour of petitioner.

Issue No. 3

18. For the reason to the recoded hereinabove while deciding issue no.1 and 5, the present petition is not maintainable against respondent No.1 as there is no relationship of employer and

employee between respondent no.1 and petitioner. So, petitioner has no locus standi to file and maintain the petition against respondent No. 1. As far as respondent no.2 is concerned, the petitioner was engaged by respondent No. 2 and he has been wrongly terminated by respondent No. 2, therefore, petitioner has got locus standi to file and maintain the petition against respondent no.2. Consequently, this issue is partly answered in favour of respondents.

Issue No. 4

19. I do not find any specific evidence on record to show that the petitioner is estopped to file the present petition by his own acts, conduct and deeds. In the absence of specific evidence this issue is answered against respondents.

RELIEF

For the reasons recorded hereinabove, the claim of the petitioner is allowed against respondent no.2 and as such the termination of services of petitioner by respondent no.2 w.e.f. 3.4.2004 is set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages. The reference is decided accordingly in negative against the respondent no.2 only. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of December, 2012.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref . No. 40 of 2010
Instituted on. 12.4.2010.
Decided on 05.12.2012.

Rajesh Kumar Dass S/o Shri Arjun Dass C/o Shri Avtar Singh Chandel, Village Kishanpura, Tehsil Nalagarh, District Solan, H.P. . *Petitioner.*

Vs.

The General Manager, M/s Isoloyed Engineering Technologies Ltd. Kishanpura, District Solan, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : None.

For respondent : Shri Sandeep Dutta, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Rajesh Kuamr Dass S/o Shri Arjun Dass by the management of M/s Isoloyed Engineering Technologies Ltd. Kishanpura, District Solan, H.P. w.e.f. 30.6.2008 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not what relief of service benefits including seniority and compensation the aggrieved workman is entitled to? ”

2. The copy of aforesaid reference was also sent to the petitioner/workman Rajesh Kumar Dass by the Labour Commissioner, H.P. Initially Shri Niranjana Verma, Advocate appeared on behalf of petitioner and availed opportunities to file claim petition. After having availed so many opportunities, petitioner failed to file any claim petition, hence, my Ld. Predecessor held to dispose of the reference on merits. The case was listed to file reply by respondent. Accordingly, respondent filed reply and stated that the demand raised by the petitioner was incorrect. In fact the petitioner was on probation and joined the duties with respondent on 30.6.2007. But the petitioner was in the habit of remaining absent without any sanctioned leave. So, the respondent on 30.6.2008 terminated the services of petitioner and offered him his full & final dues. The petitioner refused to receive the same. For the absence of petitioner there was no medical certificate or any request for leave from his side. Consequently, respondent prayed to decide the reference against the petitioner.

3. Since the petitioner has not filed any claim petition and also not led any evidence, therefore, it could not be held that the respondent had terminated the services of petitioner on 30.6.2008 without complying the provisions of Industrial Disputes Act, 1947. Hence, petitioner is not entitled to any relief of service benefits from this Court. Consequently, the reference is decided in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 5th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).

Ref. No. 60 of 2010
Instituted on. 1.5.2010.
Decided on 11.12.2012.

Raj Kumar S/o Shri Sohan Lal C/o Shri Om Dutt Sharma R/o Village and P.O Taksal,
Tehsil Kasauli, District Solan, H.P. . .Petitioner.

Vs.

The Factory Manager, M/s Anand Aircon Private Ltd. Plot No. 26, Sector-5, Parwanoo,
Tehsil Kasauli, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Niranjana Verma, Advocate

For respondent : Already exparte.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the verbal termination of the services of Shri Raj Kumar S/o Shri Sohan Lal by the Factory Manager, M/s Anand Aircon Private Ltd. Plot No. 26, Sector-5, Parwanoo, Tehsil Kasauli, District Solan, H.P. w.e.f. 13.1.2009 without serving him chargesheet, without holding enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not to what back wages, seniority, service benefits and relief the above aggrieved workman is entitled to? ”

2. The petitioner has filed the claim stating that he was working as an operator in the respondent company since January, 2007 and worked till 13.1.2009 when his services were illegally terminated by the M.D/ Factory Manager of the respondent. The petitioner was retrenched without complying with the mandatory provisions of Industrial Disputes Act, 1947. Hence, petitioner filed the claim petition with the prayer to reinstate him with all consequential benefits.

3. The respondent was served but none appeared on behalf of respondent. Consequently, respondent was proceeded against exparte. Thereafter, the case was fixed for exparte evidence of petitioner.

4. As per record, 2.12.2010 was the first opportunity for petitioner to produce exparte evidence. However, on 2.12.2012, my Learned Predecessor was on leave, hence, the case was fixed for proper order for 3.1.2010 when my Learned Predecessor was on tour. Consequently, on 9.5.2011 was the first effective opportunity for the petitioner to produce exparte evidence. Since then till 11.12.2012, petitioner availed as many as nine effective opportunities to lead exparte evidence. On 11.12.2012, neither petitioner nor any evidence was present. However, Ld. Counsel for petitioner prayed for another opportunity which was rejected by this Court after due consideration, since, petitioner availed more than sufficient opportunities. As the result, the petitioner evidence was closed by the order of Court.

5. Since, there was no evidence on behalf of petitioner in support of his claim, therefore, it cannot be held that he was illegally terminated by the respondent on 13.1.2009 without complying with the provisions of Industrial Disputes Act, 1947. Hence, the claim petition filed by the petitioner is dismissed and the reference is answered in affirmative and against the petitioner. Consequently, the petitioner is not entitled to any relief of service benefits from this Court. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 11th day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Ref. 59/2011

Sh Mohan Singh V/s M/s Daimand Products Ltd Sirmour

18.12.2012:-

Present:- Petitioner in person.

Sh Gajinder Sharma, manager ,HR for the respondent.

The following reference has been received from appropriate government for adjudication.

“Whether termination of the services of Shri Mohan Singh S/o Shri Kidu Ram Village devni (Moginad)P.O KalaAmb, tehsil Nahan District Sirmour, H.P. w.e.f,27th May,2008 by he management of M/s Daimand Products Ltd. Village devni (Moginad)P.O KalaAmb, tehsil Nahan District Sirmour,H.P.without issuing chargesheet, without conducting enquiry and without complying with the provisions ofIndustrial Disputes Act,1947 is legal and justified? If not, what amount of back wages, seniorit, past services benefits, the above worker is entitled to from the above employer?”

In order to adjudicate the aforesaid reference, the petitioner availed opportunities to file the claim petition. However, today, the petitioner disclosed that the dispute has been amicably settled by the parties. On behalf of respondent Shri Gajinder Sharma, Manager HR disclosed that the petitioner has left the job and now he is doing job somewhere else and for the job done by the petitioner under respondent, the respondent is ready to pay wages thereof in lump sum. The respondent handed over a cheque of SBI Kala Amb amounting to Rs.2589/-(Rs Two thousand five hundred eighty nine only) to the petitioner which was accepted by him. To this effect, statement of petitioner recorded wherein he admitted the aforesaid amount to be his full& final payment. In the light of aforesaid settlement, he prayed to decide the reference accordingly. Since , the dispute has been amicably settled and the petitioner has received full& final payment from the respondent, the reference stands amicably settled and decided accordingly. Now , the petitioner is not entitled to any relief from the respondent in any manner whatsoever. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File , after completion, be consigned to records.

Announced:
18.12.2012

By order,
Sd/-
Presiding Judge
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P)

Ref . No. 33 of 2008
Instituted on. 30.6.2008.
Decided on 06.12.2012.

Brij Lal S/o Shri Khajana Ram R/o Village Bughar, P.O Chakkar, Tehsil Arki, District Solan, H.P. . .*Petitioner.*

Vs.

1. The Ambuja-Darla-Kashlog-Mangoo Transport Co-operative Society Ltd., Darlaghat, Tehsil Arki, District Solan, H.P.
 2. M/s Ambuja Cement through its Manager, Darlaghat, Tehsil Arki, District Solan, H.P.
- . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Vijay Sharma, Advocate
 For respondent No. 1 : Ex-parte.
 For respondent No. 2 : Shri Peeyush Verma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Brij Lal S/o Shri Khajana Ram by the management of The Ambuja-Darla-Kashlog-Mangoo Transport Cooperative Society Ltd., Darlaghat, Tehsil Arki, District Solan, H.P. w.e.f. 31.8.2006 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not what relief of seniority, back wages and other service benefits the above workman is entitled to? ”

2. The petitioner has filed the claim stating that he was working as booking clerk with the respondent no.1 w.e.f. 3.3.2004. The petitioner further stated that respondent no.1 was working under the administrative as well as financial control of respondent no.2. The respondents terminated the services of petitioner on 31.8.2006 without following any procedure and against the provisions of Industrial Disputes Act, 1947. Hence, petitioner prayed to set aside his termination and further prayed that he be reinstated in service with all consequential benefits.

3. Respondent no.1 was served and initially put appearance through Advocate Shri Sanjeev Bhushan. However, subsequently none appeared for respondent No.1, consequently, respondent no.1 proceeded against ex-parte.

4. Respondent no.2 filed reply wherein preliminary objections as to locus standi, maintainability, supersession of material facts by the petitioner, estoppel and mis-joinder of parties were raised. On merits, respondent no.2 stated that there was no relationship of employer and employee between the parties as the petitioner was never engaged by respondent no.2. So, there was no question of retrenchment of services of petitioner by respondent no.2. Hence, respondent No. 2 prayed for the dismissal of the claim petition.

5. No rejoinder was filed by the petitioner. On the pleadings of the parties, the following issues were framed.

1. Whether the services of the petitioner w.e.f. 31.8.2008 have been terminated by the management of the Ambuja-Darla-Kashlog-Mangoo Transport Co-operative Society Ltd., Darlaghat, Tehsil Arki, District Solan, in an illegal and unjustified manner without complying the provisions of Industrial Disputes Act, 1947 as alleged?
 OPP.

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to and from whom? . . . OPP.
3. Whether the petitioner has no locus standi against respondent No. 2 as alleged? . . . OPR-2.
4. Whether the claim of the petitioner is not maintainable? . . . OPR-2.
5. Whether the petitioner is estopped from filing this petition against respondent No. 2? . . . OPR-2.
6. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 : Partly yes.

Issue No. 2 : Entitled to reinstatement in service by respondent no.1 with seniority and continuity but without back wages.

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : No

Relief. : Reference answered in negative as the services of petitioner have been illegally terminated by respondent no.1 per operative part of award.

Reasons for finding

Issue No. 1.

9. In the light of arguments of both the parties and material on record, I find sufficient evidence to establish that the petitioner was engaged by respondent No.1 and his services were illegally terminated by respondent No.1. There is no relationship of employer and employee between respondent No. 2 and the petitioner.

10. The petitioner has stepped into the witness box as PW-1 and he has categorically deposed that he was working as booking clerk with respondent no.1 society since 3.3.2004. In his cross-examination, he has admitted that he was never engaged by respondent no.2. He has also admitted that he did not file any claim against respondent no.2. This specific testimony of petitioner is sufficient to establish that he was employee of respondent no.1 and was never engaged by respondent No. 2.

11. The petitioner has categorically stated that he worked continuously w.e.f. 3.3.2004 to 31.8.2006 when his services were wrongly and illegally terminated. This testimony of petitioner has gone un-rebutted against respondent No.1 who is the employer of the petitioner. The petitioner has also stated that no notice was served upon him before terminating his services.

12. The aforesaid testimony of petitioner is making it clear that he has worked for 240 days in the preceding year from 31.8.2006. Therefore, his employer i.e respondent no.1 was under

the legal obligation to serve a notice upon the petitioner or to pay one month's wages and compensation to the petitioner in lieu of such notice as envisaged under section 25-F of Industrial Disputes Act, 1947.

No such steps were taken by the respondent no.1 before terminating the services of petitioner. Hence, the termination of petitioner by respondent no.1 w.e.f. 31.8.2008 is against the provisions of Industrial Disputes Act, 1947 and liable to set aside. Here, Ld. Counsel for petitioner rightly relied upon the law laid down by Hon'ble Supreme Court in the matter of (2010) 5 SCC- 497.

13. Though, the petitioner has alleged that respondent No. 1 was under the administrative and financial control of respondent no.2. But to this effect, I do not find any evidence on record. Moreover, this plea is not tenable, because respondent no.1 is a co-operative society and it is an independent body. It cannot be believed that a co-operative society being an independent body would be under the administrative and financial control of M/s Ambuja Cement Ltd., which is also another independent body being a company.

14. Accordingly, for the aforesaid reasons issue No. 1 is partly answered in favour of petitioner.

Issue No. 2.

15. For the reason to be recorded hereinabove while deciding issue No. 1, the services of petitioner have been wrongly and illegally terminated by respondent no.1, so, he is entitled to be reinstated in service with seniority and continuity. Keeping in view facts and circumstances of the case, the petitioner is not entitled to back wages. Hence, this issue is answered in favour of petitioner.

Issue No. 3 & 4.

16. Both these issues are interlinked and can be disposed of by a single finding. For the reason recoded hereinabove while deciding issue no.1, there is no relationship of employer and employee between respondent no.2 and the petitioner as the petitioner has himself has admitted that he was not engaged by respondent no.2. So, petitioner has no locus standi to file and maintain the petition against respondent no.2 and the claim petition filed by petitioner is not maintainable against respondent no.2. Consequently, both these issues are answered in favour of respondent No. 2.

Issue No. 5

17. I do not find any specific evidence on record to show that the petitioner is estopped to file the present petition by his own acts, conduct and deeds. In the absence of specific evidence this issue is answered against respondents.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed against respondent no.1 and as such the termination of services of petitioner by respondent no.1 w.e.f. 31.8.2006 is set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages. The reference is decided accordingly in negative against the respondent No. 1 only. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of December, 2012.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

Ref No. 33/2011

Smt. Suman Bala v/s M/s Shivalik Agro poly products & others.

3.12.2012

Present : None for petitioner.
Shri Paritosh Sharma, Advocate vice csl. for respondent.

Since none is present for petitioner, therefore, Ld. Vice csl. for respondent prayed that the reference be decided against the petitioner as on behalf of petitioner no claim was filed and she did not lead any evidence in order to hold that her service were wrongly and illegally terminated by her employer. Heard. I have also gone through the record carefully. The following reference was received from appropriate government for adjudication: "Whether Smt. Suman Bala W/o Shri Balbir Kumar has worked with M/s Shivalik Agro Poly Product Ltd., Plot no. 1-A, Sector-3, Parwanoo, District Solan, M/s Racket Banckiser India Plot no.1, Sector-3, Parwanoo, District Solan and M/s Trinetra Services, Parwanoo, District Solan, w.e.f. 26.4.2004 to 16.9.2008 as alleged in her demand notice dated 5.12.2008 (copy enclosed) ? If yes, whether termination of her services by the above employers/management w.e.f. 16.9.2009 without issuing chargesheet, without conducting enquiry and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the above employers/management?" The copy of aforesaid reference was also sent to the petitioner/workman Suman Bala by the Labour Commissioner, H.P. Even after receiving the reference in this Court, notice was issued to her. After receiving notice, she did not put appearance, therefore, the reference was fixed for further orders to be disposed of on merits. This fact is clear from record. After due consideration, I am in agreement/ submissions made by the Ld. Vice Csl. for respondent to decide the reference against the workman/employ Smt. Suman Bala as she did not put appearance in the Court and did not file any claim petition in support of her contention. In the absence of any claim petition and evidence in support thereof, it cannot be held that the services of petitioner/ workman w.e.f. 16.9.2009 have been illegally and wrongly terminated by M/s Shivalik Agro Poly Product Ltd., Plot no. 1-A, Sector-3, Parwanoo, District Solan, M/s Trinetra Services, Parwanoo, District Solan. Hence the reference is decided accordingly against Smt. Suman Bala and as such she is not entitled to any relief from this Court. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced :
3/12/2012

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT SOLAN.**

Ref No. 45 of 2007.

Instituted on. 5.6.2007.

Decided on 31.12.2012.

Virender Kumar Sharma S/o late Shri Geeta Ram R/o Village Bitna, P.O Pinjore, Tehsil Kalka, District Panchkula (Haryana) through Shri J.C Bhardwaj, President HPAITUC, HQ Saproon, Solan, H.P. .Petitioner.

Vs.

M/s Raja Forgings & Gears Ltd., Sai Road, Baddi, District Solan, H.P through its Chief Executive Officer. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri D.K Thakur, Advocate.

For respondent : Shri Ram Rattan Thakur, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services w.e.f. 19.7.2005 vide letter dated 19.7.2005 of Shri Virender Kumar Sharma S/o Shri Geeta Ram workman by the management of M/s Raja Forgings and Gears Ltd., Sai Road Baddi, District Solan after serving him chargesheet and after holding domestic enquiry is legal and justified? If not what relief of service benefits and amount of compensation the above aggrieved workman is entitled to? ”

2. The petitioner has filed the claim petition stating that he was appointed by the respondent in the year of 1985 and continued till 8.5.2004. However, his termination orders were issued on 19.7.2005 on the basis of false and fabricated chargesheet. The chargesheet was served upon the petitioner on 27.9.2004 after his oral termination on 8.5.2004. In fact a reference case no. 323 of 2004 was pending for adjudication but respondent did not obtain the sanction/approval of the Court before terminating the services of petitioner. Hence, petitioner challenged his termination orders being violative of section 33-2(b) of Industrial Disputes Act, 1947. Petitioner stated that he was not allowed by the respondent to enter the gate of factory in order to join his duties on 8.5.2004. On 8.5.2004, no show cause notice was served upon the petitioner and there was no suspension order. The petitioner was not paid any suspension allowances. On 27.5.2004, the petitioner served a demand notice upon the petitioner and in order to cover its wrong, the respondent called the explanation of the petitioner vide letter dated 17.6.2004. The respondent did not give any reply to the demand notice of the petitioner. The Chief Executive Officer called the petitioner in his chamber on 8.5.2004 and asked him to submit his resignation after receiving full & final payment. The respondent offered ` 33,000/- to the petitioner and thereafter the petitioner was

asked to not enter the factory gate. Before 27.9.2004, no chargesheet was served upon the petitioner. Even, the enquiry officer did not carry out the proceedings in accordance with principles of natural justice. The petitioner was not supplied with the list of witnesses and other documents. The petitioner was not given opportunity to reply the chargesheet, hence, the entire enquiry was carried out in a partial and biased manner. As the result, the termination of petitioner on the basis of said enquiry was illegal, null & void. Consequently, petitioner prayed to set aside his illegal termination order dated 19.7.2005 and prayed that he be reinstated in service with all consequential benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein it was admitted that the petitioner was employed by the respondent. The other allegations made by the petitioner, were specifically denied. It was denied that there was any violation of section 33-2(b) of Industrial Disputes Act, 1947. Respondent also denied that the petitioner was not allowed to enter into the gate of the factory on 8.5.2004. In fact, the petitioner remained absent from his duties. The petitioner was not terminated on 8.5.2004 but for his absence he was served show cause notice and thereafter proper chargesheet was served upon him and after holding a legal enquiry his services were terminated on 19.7.2005. The enquiry was conducted by an independent and impartial person wherein the petitioner was associated and the entire enquiry proceedings were carried out in the presence of the petitioner. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the allegations of respondent made in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of petitioner by the respondent w.e.f. 19.7.2005 after serving chargesheet and after holding domestic enquiry is illegal and unjustified as alleged? . . .OPP.
2. If issue no.1 is proved to what relief of service benefits and amount of compensation, the petitioner is entitled to? . . .OPP.
3. Whether the petitioner abandoned the job of his own as alleged? . . .OPR.
4. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed and claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity but without back wages by stopping one increment.
Issue no.3	No.
Relief.	Reference answered in negative as the penalty imposed upon the petitioner is too harsh per operative part of award.

Reasons for finding.

Issue no.1 & 3.

9. Both these issues are interconnected and can be disposed of by a single finding.

10. In the light of arguments of both the parties as well as evidence on record, I am of the considered opinion that the petitioner remained absent from his duties w.e.f 8.5.2004 without any intimation to the respondent, therefore, the respondent was justified to initiate disciplinary action against him.

11. The petitioner has alleged that the entire enquiry against him was one sided and conducted in a partial manner, therefore, the principles of natural justice were violated. As the result, the disciplinary proceedings are not sustainable under law. Hence, his termination on the basis of enquiry report was liable to be set aside.

12. After due consideration, I do not find any legal force in the aforesaid submission of the petitioner. The petitioner stepped into the witness box as PW-1 and he has deposed all the facts which have been stated by him in his claim petition. The petitioner has also alleged that on 8.5.2004 when he went to his duties, at 1.00 PM the CEO Shri Sandeep Goel called him and thereafter he called Shri Pradeep Kumar and Shri B.S Khanna and told them to make the full & final payment to the petitioner and said amount was approximately to the tune of ` 33,000/-. The CEO asked him to sign some documents but petitioner refused to sign the same. Consequently, the petitioner was turned out of the factory gate and thereafter he was not allowed to join his duties since, 9.5.2004. But to prove these allegations, I do not find sufficient and convincing evidence on record.

13. The petitioner has examined PW-2 Shri Satish Kumar and PW-3 Shri Brij Mohan in support of his aforesaid contention. The witness PW-2 had also worked in the factory of respondent from January, 1996 to December, 2004. Here the cross examination of PW-2 Shri Satish Kumar is relevant wherein he has admitted that in his presence, the petitioner was never turned out from the gate of the factory. This witness also admitted that the CEO did not issue any order to the effect that the petitioner be not allowed to enter the factory premises. Therefore, this specific testimony of witness of petitioner is sufficient to demolish his claim that he was forcibly turned out from the gate of factory by CEO and thereafter he was not allowed to join his duties.

14. The other witness of petitioner PW-3 Brij Mohan has stated that he was driver of Basant Roadways Kalka and the petitioner used to board his bus whenever he used to go to his duties. This witness has stated that on 8.5.2004, he was told by the petitioner that the factory gate was closed for him. But as per petitioner himself on 8.5.2004 he had gone to his duties and in the day time he was called by the CEO and it was on 9.5.2004 when he was not allowed to enter into the factory gate. Thus, the testimony of PW-3 Brij Mohan is not corroborating the version of petitioner. This witness has admitted in his cross examination that he was having intimacy with the petitioner. So, it could be possible that in view of such intimacy, this witness has stated only at the instance of petitioner in order to give undue benefits to the petitioner. Moreover, this witness did not produce any record to show that in fact he was driver of the bus in which the petitioner used to travel in order to go to his duties.

15. On behalf of respondent it is alleged that petitioner himself has abandoned the job. But this plea stands demolished as the respondent has taken the disciplinary action against the petitioner for willful absence from duties after 8.5.2004. Moreover, I do not find any convincing evidence on record to establish that petitioner had abandoned his job.

16. On behalf of respondent RW-1 Shri Sandeep Goel was examined who tendered in evidence relevant record i.e letters Ex. RW-1/A-1 and Ex. RW-1/A-2 and copy of enquiry report Ex. RW-1/A-3, another letter Ex. RW-1/A-4. He also produced the copy of chargesheet Ex. RW 1/A-5 and zimini orders of the enquiry report Ex. RW-1/A-6. The other witness of respondent, RW 2 Shri Vinod Bansal has stated that the petitioner was working under him and after 8.5.2004 he remained absent. Thereafter show cause notice was served upon the petitioner and he was chargesheeted and disciplinary enquiry was conducted against him wherein charges against him stood proved. RW-3 Shri Balwan Singh another employee of the respondent company also stated that after 8.5.2004, petitioner did not join his duties. This witness has also stated that he was deputed on the gate of the factory. There is nothing in his testimony to suggest that after 8.5.2004, the petitioner was not allowed to enter inside the factory gate. The respondent also examined RW-4 Shri Shyam Sunder the enquiry officer who has stated that he conducted the enquiry as per procedure established under law and prepared his report, copy of which is Ex. RW-1/A-3. He also proved the show cause notice Ex. RW-1/A-2. He has been crossexamined by the petitioner but his credibility could not be shattered. There is nothing on record to show that during enquiry principles of natural justice have been violated.

17. Thus, the evidence on record proved that the petitioner remained absent from his duties since 8.5.2004 and for the same show cause notice Ex. PC dated 17.6.2004 was served upon the petitioner which was replied by him vide Ex. PD wherein he leveled all the allegations against CEO which have been discussed hereinabove but could not be proved. Thereafter, chargesheet Ex. RW 1/A- 5 was served upon the petitioner which was tagged with the documents relied upon by the management.

18. Although, the petitioner has alleged that he was not supplied with the documents along-with chargesheet but the proceedings of enquiry Ex. RW- 1/A-6 are revealing that on the first date of hearing before enquiry officer, the petitioner had admitted that he had received the chargesheet and documents and he did not want any other documents. These proceedings dated 30.10.2004 bear the signatures of petitioner. Thereafter, in the presence of petitioner as well as his representative Shri Bayant Singh Chadda, the management witnesses were examined. These proceedings are further revealing that the copies of proceedings alongwith the statements of witnesses were supplied to the petitioner. Thereafter, the opportunity was given to the petitioner to produce his evidence. The petitioner examined his witnesses in defence and thereafter the enquiry officer heard both the parties and vide his report Ex. RW-1/A-3 held the petitioner guilty for absence from duty.

19. The evidence on record is revealing that before starting enquiry vide letter Ex. P/R-1 dated 27.9.2004 the petitioner was informed by the respondent about the appointment of enquiry officer. After receiving the aforesaid enquiry report, the CEO of respondent company has served a show cause notice Ex. RW- 1/A-2 upon the petitioner vide which he was informed about the enquiry report. The evidence on record is also revealing that the petitioner submitted his reply to the said notice and after considering the reply of the petitioner, the respondent terminated his services vide order dated 9.7.2005 copy of which is Ex. P/R-2. Hence, I do not find any infirmity in the enquiry conducted against the petitioner. He was given the opportunity of being heard and he remained associated during entire enquiry. Therefore, it cannot be held that the enquiry was conducted in a partial manner. Hence, said enquiry report cannot be set aside.

20. For the reasons recorded hereinabove, it is not established that after 8.5.2004, the petitioner was not allowed to enter into the factory premises. The petitioner in his cross examination has stated that he did not file any complaint against the respondent that he was not allowed to enter the factory gate. Therefore, to my mind the enquiry officer has rightly and correctly appreciated the evidence/record produced during enquiry. Since, the petitioner could not

give reasonable explanation for his absence from duty, therefore, he was rightly held liable for remaining absent from his duties. However, at the same time the testimony of petitioner is revealing that at the relevant time some strike was going on and a settlement was arrived at between the management and workman vide mark PB. The respondent witness RW-1 Shri Sandeep Goel has admitted the settlement copy of which is Ex. RW-1/B dated 8.4.2004. His testimony is revealing that the dispute regarding the strike was settled. So, after said settlement the petitioner was not justified to remain absent from his duties w.e.f. 8.5.2004.

21. The petitioner has taken the plea that his termination orders were passed in violation of section 33-2(b) of Industrial Disputes Act, 1947. On behalf of petitioner it was argued that demand notice of petitioner was pending and during the pendency of such notice the respondent passed the termination orders in question. But in support of this allegation, I do not find any evidence on record. The petitioner could have summoned the relevant record from the office of Conciliation Officer to show that his demand notice was pending when his termination orders dated 19.7.2005 were passed. In the absence of any evidence in this regard, said plea of petitioner is hereby rejected.

22. Therefore, in the light of my aforesaid discussion, it stands proved that petitioner remained absent from his duties w.e.f. 8.5.2004 and for the same show cause notice was served upon him but he could not file any satisfactory reply. Consequently, he was served with chargesheet and a departmental enquiry was conducted in his presence. The entire enquiry was fair and in accordance with principles of natural justice wherein his absence from duty stood proved. At the same time, I am of the opinion that the termination of petitioner from services on the basis of absence from duty is too harsh punishment and not in consonance with his misconduct. The punishment imposed upon the petitioner appears to be disproportionate to his misconduct.

23. Hence, in the larger interest of justice, this Court after invoking the provisions under section 11-A of Industrial Disputes Act, 1947, is of the opinion that the orders of termination is not justified, hence, the same is hereby set aside. The petitioner is liable to be awarded lesser punishment in lieu of termination keeping in view facts and circumstances of the case. For the absence from duty, the punishment of termination is not sustainable. Here, I am supported by the law laid down by Hon'ble Supreme Court in the matter of 2008-II LLJ-625 (SC) wherein the order of Labour Court holding dismissal of workman for absence to be excessive and Hon'ble Supreme Court has upheld the order of Labour Court by setting aside the dismissal of workman.

24. So, for the aforesaid reasons, the termination order of petitioner dated 19.7.2005 is hereby set aside. Taking into account all the relevant facts and circumstances of the case penalty of stoppage of one increment with cumulative effect is hereby imposed upon the petitioner and he is entitled to be reinstated in service with seniority and continuity but without back wages.

25. Accordingly, for the aforesaid reasons issue no.1 is answered in favour of the petitioner whereas issues no.3 is answered against the respondent.

Issue no.2.

26. For the reason to be recorded hereinabove while deciding issue no.1 & 3, the termination orders of petitioner dated 19.7.2005 is hereby set aside. However, penalty of stoppage of one increment with cumulative effect is hereby imposed upon the petitioner and he is ordered to be reinstated in service forthwith with seniority and continuity but without back wages. Accordingly, this issue is answered in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination from service w.e.f. 19.7.2005 the respondent is set aside and the petitioner is ordered to

be reinstatement in service with immediate effect with seniority and continuity but without back wages. However, the stoppage of one increment with cumulative effect is hereby imposed upon the petitioner and as such the reference is decided in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of December, 2012.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla, Camp at Solan.

Ref. 54/2011

Sh. Virender Thakur V/s M/s Padmawati Balaji Kasumpti.

20-12-2012

Present : None for the petitioner,
Shri Vivek Sharma, Advocate for respondent.

It is 11.10 AM. Case called thrice but none is present on behalf of petitioner.

Be called after lunch.

Presiding Judge,
Labour Court, Shimla.

Case called after lunch.

Present : None for the petitioner.
Shri Vivek Sharma, Advocate for respondent.

Case called again. It is 2.50 PM but none is present for petitioner. As per record the petitioner has been served but despite service none is present on behalf of petitioner. The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Virender Thakur R/o House No. C 19/100, Lower Phagli, Shimla-4, Customer Care Officer, as per demand notice drawing wages @ ` 3,000/- per month by the Manager M/s Padmawati Balaji STPI, Kasumpti Shimla-9 H.P w.e.f. 31.1.2010 without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above workman is entitled to from the above employer?”

The Labour Commissioner has sent the copy of this reference to petitioner Virender Thakur. This fact goes to suggest that the petitioner was having knowledge about the present reference. Today, despite service the petitioner is not present, therefore, it appears that the petitioner has

nothing to say against his termination by the respondent. The petitioner did not file any claim petition as such there is no evidence on behalf of petitioner. Consequently, it cannot be held that the termination of services of petitioner by the respondent is illegal and against the provisions of Industrial Disputes Act, 1947. Thus, the petitioner is not entitled to any relief from this Court. Accordingly, the reference is decided in affirmative and against the petitioner Virender Thakur. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:
20/12/2012

By order,
Sd/-
Presiding Judge,
Labour Court, Shimla.

**In the Court of Shri G. C. Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Shri Gautam Bhattacharya s/o Shri Bhola Nath Bhattacharya, r/o Hari Om Bhawan, First Floor, Comly Bank, District Shimla, Himachal Pradesh .. *Applicant.*

Versus

General Public

.. *Respondent.*

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Whereas Shri Gautam Bhattacharya s/o Shri Bhola Nath Bhattacharya, r/o Hari Om Bhawan, First Floor, Comly Bank, District Shimla, Himachal Pradesh has preferred an application to the undersigned for the registration of death of his mother namely Smt. Kalpna Bhattacharya whose date of death is 9-4-2005 in the record of Municipal Corporation Shimla.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of death mentioned above, may submit his objection in writing in this court on or before 12-7-2013 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 13th day of June, 2013.

Seal.

G. C. NEGI,
Sub-Divisional Magistrate,
Shimla (Urban), District Shimla, Himachal Pradesh.

**In the Court of Shri G. C. Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Shri Prem Chand Verma, r/o Deepak Bhawan, Kasumpti, District Shimla, Himachal Pradesh .. Applicant.

Versus

General Public

.. Respondent.

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Shri Prem Chand Verma, r/o Deepak Bhawan, Kasumpti, District Shimla, Himachal Pradesh has preferred an application to the undersigned for the registration of name of his son namely Gaurav Verma whose date of birth is 27-3-1995 in the record of Municipal Corporation Shimla.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 12-7-2013 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 13th day of June, 2013.

Seal.

G. C. NEGI,
*Sub-Divisional Magistrate,
Shimla (Urban), District Shimla, Himachal Pradesh.*

**In the Court of Shri K. S. Chaudhary, Sub-Divisional Magistrate-cum-Collector
Sub-Division Bangana, District Una (H. P.)**

श्री केहर सिंह आदि पुत्रान श्री पिरथी सिंह, गांव धरेत, तहसील बंगाणा, जिला ऊना हिमाचल प्रदेश .. अपीलार्थी।

बनाम

10. गुरदेव सिंह, 11. प्रीतम सिंह, 12. कश्मीर सिंह, 13. पिरथी चन्द, 14. केसरी चन्द पुत्रान श्री जैमल, 15. तुलसी राम, 16. हुक्म चन्द पुत्रान श्री लालो, 18. मंगत राम पुत्र श्री शेर सिंह, 19. नरेश कुमार पुत्र व 20. हाकमी देवी पत्नी स्व० श्री हरी सिंह, 21. प्रेम सिंह पुत्र श्री इन्द्र सिंह, 22. सुरेन्द्र कुमार पुत्र श्री शंकर, 24. लखमी चन्द, 25. राजेन्द्र सिंह पुत्रान व 26. कश्मीरी देवी पुत्री व 27. ज्ञानो देवी पत्नी स्व० श्री धर्म सिंह, 28. अमर सिंह पुत्र श्री ज्ञान चन्द, 29. अमर सिंह पुत्र श्री ज्ञान चन्द Lrs रेशमा देवी पत्नी स्व० श्री ज्ञान सिंह, 40. जगत राम सुन्दर पुत्र श्री लालो, 41. अमर सिंह पुत्र पुत्र ज्ञान सिंह Lrs ज्ञान सिंह पुत्र श्री चड़तू, 42. (1) धर्म चन्द पुत्र श्री फकीरीया (2) हुक्म चन्द (3) तुलसी पुत्रान श्री लालो Lrs लभू पुत्र श्री लालू, 43. जगत राम, 44. रोशन लाल, 45. सरवण कुमार पुत्रान व 46. पुष्पा देवी 47. ज्ञानो देवी, 48. निर्मला देवी पुत्रियां श्री वीरू राम, निवासी मुहाल धरेत, तप्पा ढियूंगली, तहसील बंगाणा, जिला ऊना, हिमाचल प्रदेश .. प्रति प्रतिवादीगण।

अपील आदेश दिनांक 23-5-2012 सहायक समाहर्ता, तहसील बंगाणा, जिला ऊना (हि0 प्र0) 08/पी0बी0टी0/2004 शीर्षक कर्म सिंह आदि बनाम रत्न सिंह आदि, गांव धरेत, तहसील बंगाणा, जिला ऊना, हिमाचल प्रदेश।

उपरोक्त विषय पर प्रतिवादीगण नं0 10 ता 48 को समन जारी किए गए लेकिन तामील साधारण तरीके से नहीं हो पा रही है। इस अदालत को पूर्ण विश्वास हो चुका है कि उक्त समस्त प्रतिवादीगण की तामील साधारण ढंग से नहीं हो सकती।

अतः इस इशतहार हिमाचल प्रदेश राजपत्र के माध्यम से प्रतिवादीगण नं0 10 ता 48 को सूचित किया जाता है कि वे निर्धारित तिथि पेशी दिनांक 29-6-2013 को दोपहर 2.00 बजे इस अदालत में असालतन या वकालतन उपस्थित आकर उक्त मुकद्दमा की पैरवी करें। हाजिर न आने की सूरत में उनके विरुद्ध यकतरफा कार्यवाही अमल में लाई जाएगी तथा मुकद्दमा हजा का निर्णय कर दिया जाएगा।

आज दिनांक 28-5-2013 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

K. S. CHAUDHARY,
Sub-Divisional Magistrate-cum-Collector
Sub-Division Bangana, District Una (H. P.).